

1 SEAN M. SULLIVAN (State Bar No. 229104)  
2 seansullivan@dwt.com  
DAVIS WRIGHT TREMAINE LLP  
3 865 South Figueroa Street, 24th Floor  
Los Angeles, California 90017-2566  
Telephone: (213) 633-6800  
4 Fax: (213) 633-6899

5 SAM F. CATE-GUMPERT (State Bar No. 335715)  
6 samcategumpert@dwt.com  
DAVIS WRIGHT TREMAINE LLP  
7 50 California Street, 23rd Floor  
San Francisco, California 94111-4701  
Telephone: (415) 276-6500  
8 Fax: (415) 276-6599

9 Attorneys for Defendant  
10 APPLE INC.

11

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN JOSE DIVISION**

15

16 ELIZABETH WATERMAN,

Case No. 5:24-cv-05218-EKL

17 Plaintiff,

**DEFENDANT APPLE INC.'S ANSWER  
TO FIRST AMENDED COMPLAINT**

18 v.

19 APPLE, INC.,

20 Defendant.

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Defendant Apple Inc. (“Apple”) answers the First Amended Complaint (“FAC”) filed by plaintiff Elizabeth Waterman (“Plaintiff”) as follows:

## **THE PARTIES**

1. Apple lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and denies them on that basis.

2. Apple admits that it is a California corporation with its principal place of business in Cupertino, California, and that its agent for service of process is CT Corporation.

## **JURISDICTION AND VENUE**

3. Apple admits that this Court has subject matter jurisdiction over this matter.

10       4. To the extent that the allegations in Paragraph 4 are legal arguments or  
11 conclusions, they require no answer. To the extent an answer may be required, Apple does not  
12 contest that it is subject to the personal jurisdiction of this Court in this matter.

13        5. To the extent that the allegations in Paragraph 5 are legal arguments or  
14 conclusions, they require no answer. To the extent an answer may be required, Apple does not  
15 contest that venue in this District is proper.

## FACTS

## **I. Plaintiff's Business**

6. Apple lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 6 and denies them on that basis.

7. Apple lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 7 and denies them on that basis.

8. Apple lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 8 and denies them on that basis.

9. Apple lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 9 and denies them on that basis.

10. Apple lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 10 and denies them on that basis

1           **II.     The Work at Issue in this Lawsuit**

2           ***The First Photograph***

3           11.    Apple lacks sufficient knowledge or information to form a belief as to the truth of  
4 the allegations in Paragraph 11 and denies them on that basis.

5           12.    To the extent that the allegations in Paragraph 12 are legal arguments or  
6 conclusions, they require no answer. To the extent that an answer is required, Apple admits that  
7 the United States Copyright Office issued the stated copyright registration. Except as otherwise  
8 admitted, Apple lacks sufficient knowledge or information to form a belief as to the truth of the  
9 allegations in Paragraph 12 and denies them on that basis.

10           ***The Second Photograph***

11           13.    Apple lacks sufficient knowledge or information to form a belief as to the truth of  
12 the allegations in Paragraph 13 and denies them on that basis.

13           14.    To the extent that the allegations in Paragraph 14 are legal arguments or  
14 conclusions, they require no answer. To the extent that an answer is required, Apple admits that  
15 the United States Copyright Office issued the stated copyright registration. Except as otherwise  
16 admitted, Apple lacks sufficient knowledge or information to form a belief as to the truth of the  
17 allegations in Paragraph 14 and denies them on that basis.

18           15.    Apple admits the allegations in Paragraph 15.

19           16.    To the extent that the allegations in Paragraph 16 are legal arguments or  
20 conclusions, they require no answer. To the extent that an answer is required, Apple lacks  
21 sufficient knowledge or information to form a belief as to the truth of the allegations in  
22 Paragraph 16 and denies them on that basis.

23           **III.    Defendant's Unlawful Activities**

24           17.    Apple admits the allegations in Paragraph 17.

25           18.    To the extent that the allegations in Paragraph 18 are legal arguments or  
26 conclusions, they require no answer. To the extent that an answer is required, Apple admits that  
27 it distributes digital media, including music, music videos, audio books, and podcasts.

19. To the extent that the allegations in Paragraph 19 are legal arguments or conclusions, they require no answer. To the extent that an answer is required, Apple lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 19 and denies them on that basis.

20. Apple admits that the screenshots referenced in Paragraph 20 and appearing in Exhibit C to the FAC appear to be edited and/or cropped versions of pages found on Apple's website. Except as otherwise admitted, Apple lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 20 and denies them on that basis.

21. To the extent that the allegations in Paragraph 21 are legal arguments or conclusions, they require no answer. To the extent that an answer may be required, Apple admits that it received, through its designated agent, copyright takedown notices from Plaintiff regarding the Work. Except as otherwise admitted, Apple lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 21.

22. To the extent that the allegations in Paragraph 22 are legal arguments or conclusions, they require no answer. To the extent that an answer is required, Apple denies the allegations in Paragraph 22.

23. To the extent that the allegations in Paragraph 23 are legal arguments or conclusions, they require no answer. To the extent that an answer is required, Apple denies the allegations in Paragraph 23.

#### **COUNT I – VICARIOUS COPYRIGHT INFRINGEMENT**

24. Apple incorporates and realleges its responses set forth in the preceding paragraphs of this answer.

25. To the extent that the allegations in Paragraph 25 are legal arguments or conclusions, they require no answer. To the extent that an answer is required, Apple lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 25 and denies them on that basis.

26. To the extent that the allegations in Paragraph 26 are legal arguments or conclusions, they require no answer. To the extent that an answer is required, Apple lacks

1 sufficient knowledge or information to form a belief as to the truth of the allegations in  
 2 Paragraph 26 and denies them on that basis.

3       27. To the extent that the allegations in Paragraph 27 are legal arguments or  
 4 conclusions, they require no answer. To the extent that an answer is required, Apple lacks  
 5 sufficient knowledge or information to form a belief as to the truth of the allegations in  
 6 Paragraph 27 and denies them on that basis.

7       28. To the extent that the allegations in Paragraph 28 are legal arguments or  
 8 conclusions, they require no answer. To the extent that an answer is required, Apple lacks  
 9 sufficient knowledge or information to form a belief as to the truth of the allegations in  
 10 Paragraph 28 and denies them on that basis.

11       29. To the extent that the allegations in Paragraph 29 are legal arguments or  
 12 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 13 allegations in Paragraph 29.

14       30. To the extent that the allegations in Paragraph 30 are legal arguments or  
 15 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 16 allegations in Paragraph 30.

17       31. To the extent that the allegations in Paragraph 31 are legal arguments or  
 18 conclusions, they require no answer. To the extent that an answer may be required, Apple  
 19 admits that it received copyright takedown notices from Plaintiff regarding the Work. Apple  
 20 denies the remaining allegations in Paragraph 31.

21       32. To the extent that the allegations in Paragraph 32 are legal arguments or  
 22 conclusions, they require no answer. Apple admits that the First Photograph and Second  
 23 Photograph have been taken down and replaced with alternate album art. To the extent that an  
 24 answer is required, Apple denies the remaining allegations in Paragraph 32.

25       33. To the extent that the allegations in Paragraph 33 are legal arguments or  
 26 conclusions, they require no answer. To the extent that an answer is required, Apple admits the  
 27 policies described in Paragraph 33, which speak for themselves, are published on Apple's  
 28 website. Apple denies the remaining allegations in Paragraph 33.

1       34. To the extent that the allegations in Paragraph 34 are legal arguments or  
 2 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 3 allegations in Paragraph 34.

4       35. To the extent that the allegations in Paragraph 35 are legal arguments or  
 5 conclusions, they require no answer. To the extent that an answer may be required, Apple  
 6 admits that it utilizes the copyright disclaimer “Copyright © 2024 Apple Inc. All Rights  
 7 Reserved” on its website. Apple denies the remaining allegations in Paragraph 35.

8       36. To the extent that the allegations in Paragraph 36 are legal arguments or  
 9 conclusions, they require no answer. To the extent that an answer may be required, Apple  
 10 admits that it has a registered Copyright Agent to accept notifications of claimed infringement  
 11 under the DMCA. To the extent that an answer is required, Apple denies the remaining  
 12 allegations in Paragraph 36.

13       37. To the extent that the allegations in Paragraph 37 are legal arguments or  
 14 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 15 allegations in Paragraph 37.

16       38. To the extent that the allegations in Paragraph 38 are legal arguments or  
 17 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 18 allegations in Paragraph 38.

19       39. To the extent that the allegations in Paragraph 39 are legal arguments or  
 20 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 21 allegations in Paragraph 39.

22       40. To the extent that the allegations in Paragraph 40 are legal arguments or  
 23 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 24 allegations in Paragraph 40.

25       41. To the extent that the allegations in Paragraph 41 are legal arguments or  
 26 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 27 allegations in Paragraph 41.

28           a. Plaintiff’s prayer for relief does not require a response.

- b. Plaintiff's prayer for relief does not require a response.
  - c. Plaintiff's prayer for relief does not require a response.
  - d. Plaintiff's prayer for relief does not require a response.
  - e. Plaintiff's prayer for relief does not require a response.
  - f. Plaintiff's prayer for relief does not require a response.
  - g. Plaintiff's prayer for relief does not require a response.

## **COUNT II – CONTRIBUTORY COPYRIGHT INFRINGEMENT**

42. Apple incorporates and realleges its responses set forth in the preceding paragraphs of this answer.

10        43. To the extent that the allegations in Paragraph 43 are legal arguments or  
11 conclusions, they require no answer. To the extent that an answer is required, Apple lacks  
12 sufficient knowledge or information to form a belief as to the truth of the allegations in  
13 Paragraph 43 and denies them on that basis.

14        44. To the extent that the allegations in Paragraph 44 are legal arguments or  
15 conclusions, they require no answer. To the extent that an answer is required, Apple lacks  
16 sufficient knowledge or information to form a belief as to the truth of the allegations in  
17 Paragraph 44 and denies them on that basis.

18        45. To the extent that the allegations in Paragraph 45 are legal arguments or  
19 conclusions, they require no answer. To the extent that an answer is required, Apple lacks  
20 sufficient knowledge or information to form a belief as to the truth of the allegations in  
21 Paragraph 45 and denies them on that basis.

22        46. To the extent that the allegations in Paragraph 46 are legal arguments or  
23 conclusions, they require no answer. To the extent that an answer is required, Apple lacks  
24 sufficient knowledge or information to form a belief as to the truth of the allegations in  
25 Paragraph 46 and denies them on that basis.

26        47. To the extent that the allegations in Paragraph 47 are legal arguments or  
27 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
28 allegations in Paragraph 47.

1       48. To the extent that the allegations in Paragraph 48 are legal arguments or  
 2 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 3 allegations in Paragraph 48.

4       49. To the extent that the allegations in Paragraph 49 are legal arguments or  
 5 conclusions, they require no answer. To the extent that an answer may be required, Apple  
 6 admits that it received copyright takedown notices from Plaintiff regarding the Work. Apple  
 7 denies the remaining allegations in Paragraph 49.

8       50. To the extent that the allegations in Paragraph 50 are legal arguments or  
 9 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 10 allegations in Paragraph 50.

11      51. To the extent that the allegations in Paragraph 51 are legal arguments or  
 12 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 13 allegations in Paragraph 51.

14      52. To the extent that the allegations in Paragraph 52 are legal arguments or  
 15 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 16 allegations in Paragraph 52.

17      53. To the extent that the allegations in Paragraph 53 are legal arguments or  
 18 conclusions, they require no answer. To the extent that an answer may be required, Apple  
 19 admits that it received copyright takedown notices from Plaintiff regarding the Work. Except as  
 20 otherwise admitted, Apple denies the allegations in Paragraph 53.

21      54. Apple admits that it is a multinational corporation. Admit admits that it maintains  
 22 an in-house legal staff. Except as otherwise admitted, Apple denies the allegations in Paragraph  
 23 54.

24      55. To the extent that the allegations in Paragraph 55 are legal arguments or  
 25 conclusions, they require no answer. To the extent that an answer may be required, Apple  
 26 admits that it utilizes the copyright disclaimer “Copyright © 2024 Apple Inc. All Rights  
 27 Reserved” on its website. Apple denies the remaining allegations in Paragraph 55.

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1       56. To the extent that the allegations in Paragraph 56 are legal arguments or  
 2 conclusions, they require no answer. To the extent that an answer may be required, Apple  
 3 admits that it has a registered Copyright Agent to accept notifications of claimed infringement  
 4 under the DMCA. To the extent that an answer is required, Apple denies the allegations in  
 5 Paragraph 56.

6       57. To the extent that the allegations in Paragraph 57 are legal arguments or  
 7 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 8 allegations in Paragraph 57.

9       58. To the extent that the allegations in Paragraph 58 are legal arguments or  
 10 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 11 allegations in Paragraph 58.

12       59. To the extent that the allegations in Paragraph 59 are legal arguments or  
 13 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 14 allegations in Paragraph 59.

15       60. To the extent that the allegations in Paragraph 60 are legal arguments or  
 16 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 17 allegations in Paragraph 60.

18       61. To the extent that the allegations in Paragraph 61 are legal arguments or  
 19 conclusions, they require no answer. To the extent that an answer is required, Apple denies the  
 20 allegations in Paragraph 61.

- 21           h. Plaintiff's prayer for relief does not require a response.
- 22           i. Plaintiff's prayer for relief does not require a response.
- 23           j. Plaintiff's prayer for relief does not require a response.
- 24           k. Plaintiff's prayer for relief does not require a response.
- 25           l. Plaintiff's prayer for relief does not require a response.
- 26           m. Plaintiff's prayer for relief does not require a response.
- 27           n. Plaintiff's prayer for relief does not require a response.

**ADDITIONAL DEFENSES**

Apple asserts the following additional defenses in response to the allegations in the FAC. Apple reserves the right to amend this answer with additional defenses as further information is obtained. By alleging these additional defenses, Apple is not in any way agreeing or conceding that it has the burden of proof or persuasion on any of these issues.

**First Additional Defense**

1. The complaint and each of its causes of actions fail to state a claim upon which relief can be granted.

**Second Additional Defense**

2. Plaintiff's claims are barred, in whole or in part, because Plaintiff has not demonstrated that she possesses valid, registered copyrights for the allegedly infringed works.

**Third Additional Defense**

3. Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff does not own the allegedly infringed works.

**Fourth Additional Defense**

4. Plaintiff's claims are barred, in whole or in part, because the allegedly infringing works are not substantially similar to the allegedly infringed works.

**Fifth Additional Defense**

5. Plaintiff's claims are barred, in whole or in part, because Apple is protected by one or more of the DMCA Safe Harbors in 17 U.S.C. § 512.

**Sixth Additional Defense**

6. Plaintiff's claims are barred, in whole or in part, because the allegedly infringed works are not protectable under copyright law.

**Seventh Additional Defense**

7. Plaintiff's claims are barred, in whole or in part, because any alleged copying constituted fair use.

**Eighth Additional Defense**

8. Plaintiff's claims are barred, in whole or in part, because one or more third parties  
are liable for the alleged conduct.

**Ninth Additional Defense**

9. Plaintiff's claims are barred, in whole or in part, because the allegedly infringed  
works are not sufficiently original.

**Tenth Additional Defense**

10. Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of  
waiver, estoppel, and/or laches.

**Eleventh Additional Defense**

11. Plaintiff's claims are barred, in whole or in part, because Apple did not materially  
contribute to or induce the alleged copyright infringement.

**Twelfth Additional Defense**

12. Plaintiff's claims are barred, in whole or in part, because Apple did not have a  
direct financial interest in the alleged copyright infringement.

**Thirteenth Additional Defense**

13. Plaintiff's claims are barred, in whole or in part, because Plaintiff has not suffered  
any damage proximately caused by Apple.

**Fourteenth Additional Defense**

14. Plaintiff's claims are barred, in whole or in part, because the conduct complained  
of in the FAC was impliedly and/or expressly licensed.

**Fifteenth Additional Defense**

15. Plaintiff's claims are moot, in whole or in part, to the extent that a settlement has  
been reached with alleged direct infringers of the Work.

**Sixteenth Additional Defense**

16. Plaintiff's damages claims are barred, in whole or in part, by Apple's innocent  
intent.

## **Seventeenth Additional Defense**

17. Plaintiff's damages claims are barred, in whole or in part, because Plaintiff's alleged damages are speculative or uncertain in their nature and are not susceptible of proof with reasonable certainty.

## **Eighteenth Additional Defense**

18. Plaintiff has suffered no injury or damage as a result of any act or conduct by Apple.

## **Nineteenth Additional Defense**

19. To the extent Plaintiff's purported copyright was not validly registered before the alleged infringement occurred, Plaintiff's request for attorneys' fees is barred.

## **Twentieth Additional Defense**

20. The FAC, to the extent that it seeks injunctive relief, is barred because the injury or damage allegedly suffered by Plaintiff, if any, would be adequately compensated in an action at law for damages, and therefore Plaintiff is not entitled to seek equitable relief.

## **Twenty-First Additional Defense**

21. The FAC, to the extent that it seeks statutory, exemplary, or punitive damages, violates Apple's rights under the Fifth and Fourteenth Amendments of the United States Constitution, and Article I, § 7 and Article IV, § 16 of the California Constitution.

## **PRAYER FOR RELIEF**

Apple prays for relief as follows:

1. A judgment in favor of Apple denying Plaintiff all requested relief and dismissing the FAC with prejudice;

2. Apple be awarded its costs of suit, including, without limitation, reasonable attorneys' fees, pursuant to 17 U.S.C. § 505; and

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3. That the Court award Apple such other and further relief as the Court deems just and proper.

DATED: November 12, 2024

DAVIS WRIGHT TREMAINE LLP  
SEAN M. SULLIVAN  
SAM F. CATE-GUMPERT

By: /s/ Sean M. Sullivan  
Sean M. Sullivan

Attorneys for Defendant  
APPLE INC.